

## Department of Veterans Affairs

## § 3.657

after such pretermination notice but before the proposed date of discontinuance or reduction, a hearing shall be scheduled, but payment shall nevertheless be discontinued or reduced as of the date proposed in the pretermination notice or date of last payment, whichever is later, unless information is presented which warrants a different determination. When the claimant has also expressed willingness to report for an examination, however, the provisions of paragraph (c)(3) of this section shall apply.

(Authority: 38 U.S.C. 501)

CROSS REFERENCES: Procedural due process and appellate rights: See § 3.103. Examinations: See § 3.326. Reexaminations: See § 3.327. Resumption of rating when veteran subsequently reports for VA examination: See § 3.330.

[55 FR 49521, Nov. 29, 1990; 58 FR 46865, Sept. 3, 1993]

### § 3.656 Disappearance of veteran.

(a) When any veteran has disappeared for 90 days or more and his or her whereabouts remain unknown to the members of his or her family and the Department of Veterans Affairs, disability compensation which he or she was receiving or entitled to receive may be paid to or for his or her spouse, children and parents, effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from the date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) Dependency and indemnity compensation.

(2) Amount of compensation payable to the veteran at the time of disappearance, subject to authorized insurance deductions.

(b) Where a veteran's whereabouts become known to the Department of Veterans Affairs after an award to dependents has been made as provided in this section, the award to the dependents will be discontinued effective date of last payment, and appropriate action will be taken to adjust the veteran's award in accordance with the facts found.

(Authority: 38 U.S.C. 1158)

(c) Awards to dependents will not be continued under this section in any case where the facts are such as to bring into effect the presumption of death under § 3.212.

(d) When any veteran has disappeared for 90 days or more and the veteran's whereabouts remain unknown to members of the veteran's family and the Department of Veterans Affairs, any improved pension, section 306 or service pension which the veteran was receiving or entitled to receive may be paid to or for the spouse or children. The status of the veteran at the time of disappearance, with respect to permanent and total disability, income and net worth will be presumed to continue unchanged. Payment for the spouse or children will be effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) The service death pension rate if the veteran was receiving service pension or the improved death pension rate if the veteran was receiving section 306 or improved pension.

(2) The amount of pension payable to the veteran at the time of disappearance.

(Authority: 38 U.S.C. 1507)

[26 FR 1599, Feb. 24, 1961, as amended at 27 FR 11891, Dec. 1, 1962; 30 FR 6649, May 14, 1965; 40 FR 14313, Mar. 31, 1975; 44 FR 45942, Aug. 6, 1979]

### § 3.657 Surviving spouse becomes entitled, or entitlement terminates.

Where a surviving spouse establishes entitlement to pension, compensation, or dependency and indemnity compensation, an award to another person as surviving spouse, or for a child or children as if there were no surviving spouse will be discontinued or adjusted as provided in this section.

(a) *Surviving spouse's awards.* For periods on or after December 1, 1962, where a legal surviving spouse establishes entitlement after payments have been made to another person as surviving spouse, the full rate payable to